

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ALISIA MORRIS,

Plaintiff,

-against-

IOD INCORPORATED and SOUTH NASSAU
COMMUNITIES HOSPITAL,

Defendants.
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USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 9/11/2014
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14-CV-7073 (VEC)

ORDER

VALERIE CAPRONI, United States District Judge:

WHEREAS, Plaintiff, a New York resident, filed the Complaint in this purported class action on September 2, 2014 in the U.S. District Court for the Southern District of New York, alleging that Defendants IOD Incorporated (“IOD”) and South Nassau Communities Hospital (“South Nassau”) overcharged her and others for copies of hospital or medical records in violation of New York law; and

WHEREAS, according to the Complaint, Defendant South Nassau is a hospital located in Nassau County, New York, one of the counties comprising the jurisdiction of the U.S. District Court for the Eastern District of New York; and

WHEREAS, according to the Complaint, Defendant IOD is a corporation organized and existing under the laws of a state other than the State of New York; and

WHEREAS, Plaintiff’s proposed class consists of all persons or entities who requested and were overcharged for medical records by Defendants and any other physicians, hospitals and health care providers in the State of New York; and

WHEREAS, it therefore appears that (a) the majority of the members of the proposed class may be citizens of the State of New York; (b) at least one Defendant whose alleged conduct forms a significant basis for the claims asserted and from whom significant relief is sought is a citizen of the State of New York; and (c) the principal injuries resulting from the alleged conduct of each Defendant may have been incurred in the State of New York; and

WHEREAS, the Complaint affirms that IOD has not been sued within the last three years in a class action suit involving the same or similar allegations to those alleged in the Complaint, but makes no such affirmance with respect to Defendant South Nassau; and

WHEREAS, despite Plaintiff claim that federal subject matter jurisdiction exists over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), it appears that subject matter jurisdiction may be lacking pursuant to one or more of the exceptions under 28 U.S.C. § 1332(d)(4), and although Defendants would normally bear the burden of establishing that such an exception applies, the Court has an independent obligation to confirm that subject matter jurisdiction in fact exists over this case; and

WHEREAS, the Complaint alleges that venue is proper in the U.S. District Court for the Eastern District of New York, but the lawsuit was filed in the U.S. District Court for the Southern District of New York, it is hereby ORDERED:

1. The parties shall file briefs indicating their respective positions as to (a) the basis, if any, of the Court's subject matter jurisdiction over this case and (b) the propriety of venue in the U.S. District Court for the Southern District of New York.

2. Plaintiff's brief shall be filed electronically with the Court by September 24, 2014, and shall include, inter alia, a discussion of (a) whether any other class action suit asserting the same or similar factual allegations to those alleged in the Complaint has been filed against any of the Defendants on behalf of the proposed class during the 3-year period preceding the

filing of the Complaint and (b) the basis for Plaintiff's assertion that Defendant IOD is the "primary defendant" under 28 U.S.C. § 1332(d)(4)(B).

3. Defendants' briefs shall be filed by October 8, 2014.


4. If either or both Defendants argue that subject matter jurisdiction is lacking, Plaintiff's deadline to file any brief in opposition will be October 15, 2014.

5. Any request for an adjournment of the briefing dates indicated in paragraphs 2 through 4 above will be considered only if made in writing and otherwise in accordance with the Court's Individual Practices. The Individual Practices and Civil Case Management Plan may be found on the Court's website: <http://nysd.uscourts.gov/judges/Caproni>.

6. Plaintiff's counsel is responsible for distributing copies of this Order to all parties.

SO ORDERED.

Date: September 11, 2014
New York, New York


VALERIE CAPRONI
United States District Judge